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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,310	07/17/2003	Janice North	273012013101	4352

25225 7590 05/23/2005
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EXAMINER

HENLEY III, RAYMOND J

ART UNIT PAPER NUMBER

1614

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/622,310	Applicant(s) NORTH ET AL.	
	Examiner Raymond J. Henley III	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-11,13,15,16 and 18-22 is/are rejected.
- 7) ☒ Claim(s) 2-4,12,14,17 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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CLAIMS 1-23 ARE PRESENTED FOR EXAMINATION

Applicants' Response to Non-Final Office Action filed May 3, 2005 has been received and entered into the application. No claims have been amended, added or canceled.

In view of Applicants' statement at page 6 of their response that "the subject matter of Margaron and the instant claimed subject matter were, at the time the invention was made, owned by or subject to an obligation or assignment to the same entity, GLT, Inc.", the rejection of claims 2-4, 12, 14, 17 and 23 under 35 U.S.C. § 103(a), as set forth in the previous Office action dated November 17, 2004 at pages 4-5, is withdrawn.

Claim Objection

Claims 2-4, 12, 14, 17 and 23 are objected to as depending from a rejected base claim (note below), but are otherwise in condition for allowance.

Claim Rejection - 35 USC § 102

Claims 1, 5-11, 13, 15, 16 and 18-22 remain rejected under 35 U.S.C. 102(e) as being anticipated by Margaron et al., (U.S. Patent Application Publication No. 2003/0083649), already of record, for the reasons of record as set forth in the previous Office action at pages 2-4.

Applicants' arguments at pages 4-5 of the above referenced Response have been carefully considered, but fail to persuade the Examiner of error in his determination.

The essence of Applicants' position appears to be that the present rejection is improper because irradiation of the macula would not have been inherent in the method of Margaron et al. This does not diminish the propriety of the present rejection, however, because the rejection does not stand or fall on whether or not the irradiation of the macula would be inherent in the method

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of Margaron et al. Rather, given the disclosure of Margaron et al. already relied on by the Examiner, irradiation of the macula is deemed a concept that is disclosed with "sufficient specificity to constitute an anticipation under the statute" (MPEP § 2131.03) or else would have been "at once envisaged" (MPEP § 2131.02). In either case, given that Margaron et al. teach the treatment of diabetic macula edema which involves a step of irradiating a "target tissue", it is believed that the irradiation of the macula is a concept that was placed in the possession of the public through the publication of the disclosure of Margaron et al. It is noted that the sections of the MPEP cited above relate to chemical genus-species relationships. However, the concepts set forth therein are nevertheless believed applicable to the present situation.

Accordingly, claims 1, 5-11, 13, 15, 16 and 18-22 remain properly rejected.

None of the claims are allowed.

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

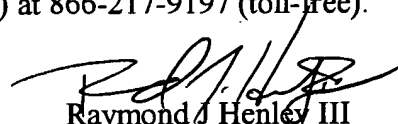
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Henley III whose telephone number is 571-272-0575. The examiner can normally be reached on M-F, 8:30 am to 4:00 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Raymond J. Henley III
Primary Examiner
Art Unit 1614

May 16, 2005